

AMENDED IN ASSEMBLY AUGUST 15, 2005

AMENDED IN ASSEMBLY JULY 7, 2005

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE MAY 3, 2005

AMENDED IN SENATE APRIL 25, 2005

AMENDED IN SENATE APRIL 20, 2005

SENATE BILL

No. 422

Introduced by Senator Simitian

February 17, 2005

An act to amend Sections 116.240, 116.610, ~~116.910~~, and 116.940 of, and to add Sections 116.221, ~~116.222~~, and ~~116.232~~ and *116.222* to, the Code of Civil Procedure, relating to small claims court.

LEGISLATIVE COUNSEL'S DIGEST

SB 422, as amended, Simitian. Small claims court: jurisdiction.

(1) Existing law specifies that the jurisdiction of the small claims court includes various actions in which the demand does not exceed \$5,000, with specified exceptions. ~~Under existing law, the filing fee for a small claims action is \$20 if the number of claims previously filed by the party in each court within the previous 12 months is 12 or less, and \$60 for the filing of any additional claims until July 1, 2006, at which time the filing fee for additional claims decreases to \$35.~~

This bill would increase the small claims court jurisdiction over actions brought by a natural person, if the amount does not exceed \$7,500, with specified exceptions. The bill would also require, in small claims court actions to enforce the payment of a debt, that the

statement of calculation of liability separately state the original debt, and other payments to the debt, as specified. ~~The bill would increase the filing fee for cases in which the jurisdictional limit exceeds \$5,000 to \$75, as specified, with \$23 of the fee to enhance advisory services, \$2 of the fee to be used to enhance law library services, and the balance to be deposited in the Trial Court Trust Fund.~~

(2) Existing law authorizes small claims court cases to be heard by temporary judges who are members of the State Bar, and who are sworn and empowered to act in this capacity.

On and after July 1, 2006, this bill would require temporary judges, prior to serving in small claims court, and every 3 years thereafter, to take a course of study, offered by the courts on ethics and substantive law under rules adopted by the Judicial Council, covering specified state, federal, and local laws, with assistance from the Department of Consumer Affairs, if fiscally able to provide that assistance.

(3) Existing law prescribes the jurisdiction and procedures for small claims court, including, but not limited to, the setting of filing fees. Existing law also entitles a prevailing party to the costs of a small claims action.

This bill would provide that a portion of certain filing fees are not recoverable as costs.

(4) Existing law requires each small claims court advisory service, offered without charge to litigants and potential litigants, to provide individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance.

This bill would require the topics covered by individual personal advisory services to include preparation of small claims court filings, procedures, including procedures related to the conduct of the hearing, and information on the collection of small claims court.

(5) The bill would include other conforming changes and related findings and declarations of the Legislature.

~~(6) The bill would provide that certain of its provisions described in (1), relating to the increase and distribution of the filing fee for cases in which the jurisdictional limit exceeds \$5,000, would only become operative if AB 1742 is not enacted.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that the quality of and access to justice in small claims court in California varies widely from jurisdiction to jurisdiction. The small claims court system should be improved in the following ways:

(1) Commissioners and temporary judges adjudicate many complex issues including, but not limited to, consumer law, rent deposit law, tort law, and contract law. In a report commissioned by the Administrative Office of the Courts, entitled the “California Three Track Civil Litigation Study,” Policy Studies, Incorporated reported that paid court commissioners, “see the full panoply of issues raised in small claims cases, and part of their job is to become knowledgeable in the areas of law likely to arise in small claims court. Further, they have the time and duty to research issues of law likely to arise in small claims court...[and those] that arise with which they are not familiar.” The potential knowledge gap between temporary judges and commissioners should be narrowed through increased use of commissioners and the use of *trained*, temporary judges in small claims court who serve on a frequent, compensated basis in order to ensure an improved ability to deliver justice.

(2) For advisers, improvements need to be made in the availability of in-person assistance, in the knowledge and experience of the advisors, and in the advice being given or supervised by attorneys, so that the assistance can include advice about how to present and defend a claim.

(3) Qualified interpreters are not available in many jurisdictions in California. With the increasing linguistic diversity in California’s population in recent decades, the need for interpreter services has grown proportionately.

(b) (1) It is the intent of the Legislature to raise the jurisdictional limit for natural persons only. The jurisdictional increase in this act is limited to natural persons, and is subject to other existing restrictions. It is the intent of the Legislature in limiting the increase to natural persons that other forms of persons, including, but not limited to, corporations, partnerships, unincorporated associations, governmental entities, and any other forms of persons as may now exist or may exist in the future,

1 other than individuals, do not qualify for the jurisdictional
2 increase under this act.

3 (2) It is the intent of the Legislature that the jurisdictional limit
4 of subdivision (a) of Section 116.231 of the Code of Civil
5 Procedure and subdivision (c) of Section 116.220 of the Code of
6 Civil Procedure shall not be changed by this legislation.

7 (3) It is the intent of the Legislature that jurisdictional limits
8 shall not be raised again, particularly with respect to individuals
9 as defendants, until services are funded at a level sufficient to
10 provide all of the following:

11 (A) In-person advice from advisers who are legal
12 professionals.

13 (B) Staffing levels that are adequate to meet the demand, and
14 also adequate to permit the small claims court advisory service to
15 provide services to both parties in a small claims court case
16 without conflicts of interest.

17 (C) Professional, well-trained, *compensated* decisionmakers,
18 in small claims courts in all counties in California, who meet
19 standards established by the Judicial Council.

20 (4) It is the intent of the Legislature that temporary judges
21 should be knowledgeable of state and federal consumer laws,
22 *including, but not limited to*, rent deposit law, the state and
23 federal Fair Debt Collection Practices Acts, the federal Truth in
24 Lending Act, the federal Fair Credit Billing Act, the federal
25 Electronic Fund Transfer Act, tort law, online purchasing law
26 and other contract law, defenses to contract claims, defenses to
27 debts, and other laws determined by the Judicial Council and the
28 courts to be important in the adjudication of small claims cases.

29 SEC. 2. Section 116.221 is added to the Code of Civil
30 Procedure, to read:

31 116.221. In addition to the jurisdiction conferred by Section
32 116.220, the small claims court has jurisdiction in an action
33 brought by a natural person, if the amount of the demand does
34 not exceed seven thousand five hundred dollars (\$7,500), except
35 for actions otherwise prohibited by subdivision (c) of Section
36 116.220 or subdivision (a) of Section 116.231.

37 SEC. 3. Section 116.222 is added to the Code of Civil
38 Procedure, to read:

39 116.222. If the action is to enforce the payment of a debt, the
40 statement of calculation of liability shall separately state the

1 original debt, each payment credited to the debt, each fee and
2 charge added to the debt, each payment credited against those
3 fees and charges, all other debits or charges to the account, and
4 an explanation of the nature of those fees, charges, debits, and all
5 other credits to the debt, by source and amount.

6 ~~SEC. 4. Section 116.232 is added to the Code of Civil~~
7 ~~Procedure, to read:~~

8 ~~116.232. (a) The filing fee for cases in which the~~
9 ~~jurisdictional limit exceeds five thousand dollars (\$5,000) shall~~
10 ~~be seventy-five dollars (\$75).~~

11 ~~(b) Twenty-three dollars (\$23) of the fee authorized in~~
12 ~~subdivision (a) shall be used to enhance advisory services. This~~
13 ~~portion of the fee shall be deposited with the treasurer of the city~~
14 ~~and county or county in whose jurisdiction the court is located in~~
15 ~~accordance with Section 116.910, and shall supplement, not~~
16 ~~replace, existing funding sources for advisory services.~~

17 ~~(c) Fifty dollars (\$50) of the fee authorized in subdivision (a)~~
18 ~~shall be deposited upon collection in the special account in the~~
19 ~~county treasury established pursuant to subdivision (b) of Section~~
20 ~~68085 of the Government Code, and transmitted therefrom~~
21 ~~monthly to the Controller for deposit in the Trial Court Trust~~
22 ~~Fund.~~

23 ~~(d) Two dollars (\$2) of the fee authorized in subdivision (a)~~
24 ~~shall be used to enhance law library services. This portion of the~~
25 ~~fee shall be deposited with the treasurer of the county, pursuant~~
26 ~~to Section 6320 of the Business and Professions Code, and shall~~
27 ~~supplement, not replace, existing funding sources for law~~
28 ~~libraries.~~

29 ~~SEC. 5.~~

30 ~~SEC. 4. Section 116.240 of the Code of Civil Procedure is~~
31 ~~amended to read:~~

32 ~~116.240. (a) With the consent of the parties who appear at~~
33 ~~the hearing, the court may order a case to be heard by a~~
34 ~~temporary judge who is a member of the State Bar, and who has~~
35 ~~been sworn and empowered to act until final determination of the~~
36 ~~case.~~

37 ~~(b) Prior to serving as a temporary judge in small claims court,~~
38 ~~on and after July 1, 2006, and at least every three years~~
39 ~~thereafter, each temporary judge shall take the course of study~~
40 ~~offered by the courts on ethics and substantive law under rules~~

1 adopted by the Judicial Council. The course shall include, but not
2 be limited to, state and federal consumer laws, landlord-tenant
3 law along with any applicable county specific rent deposit law,
4 the state and federal Fair Debt Collection Practices Acts, the
5 federal Truth in Lending Act, the federal Fair Credit Billing Act,
6 the federal Electronic Fund Transfer Act, tort law, and contract
7 law, including defenses to contracts and defenses to debts. On
8 substantive law, the courts may receive assistance from the
9 Department of Consumer Affairs to the extent that the
10 department is fiscally able to provide that assistance.

11 ~~SEC. 6.~~

12 *SEC. 5.* Section 116.610 of the Code of Civil Procedure is
13 amended to read:

14 116.610. (a) The small claims court shall give judgment for
15 damages, or equitable relief, or both damages and equitable
16 relief, within the jurisdictional limits stated in Sections 116.220
17 and 116.231, and may make ~~such~~ *any* orders as to time of
18 payment or otherwise as the court deems just and equitable for
19 the resolution of the dispute.

20 (b) The court may, at its discretion or on request of any party,
21 continue the matter to a later date in order to permit and
22 encourage the parties to attempt resolution by informal or
23 alternative means.

24 (c) The judgment shall include a determination whether the
25 judgment resulted from a motor vehicle accident on a California
26 highway caused by the defendant's operation of a motor vehicle,
27 or by the operation by some other individual, of a motor vehicle
28 registered in the defendant's name.

29 (d) If the defendant has filed a claim against the plaintiff, or if
30 the judgment is against two or more defendants, the judgment,
31 and the statement of decision if one is rendered, shall specify the
32 basis for and the character and amount of the liability of each of
33 the parties, including, in the case of multiple judgment debtors,
34 whether the liability of each is joint or several.

35 (e) If specific property is referred to in the judgment, whether
36 it be personal or real, tangible or intangible, the property shall be
37 identified with sufficient detail to permit efficient
38 implementation or enforcement of the judgment.

39 (f) In an action against several defendants, the court may, in its
40 discretion, render judgment against one or more of them, leaving

1 the action to proceed against the others, whenever a several
2 judgment is proper.

3 (g) (1) The prevailing party is entitled to the costs of the
4 action, including the costs of serving the order for the appearance
5 of the defendant.

6 (2) Notwithstanding paragraph (1) and subdivision (b) of
7 Section 1032, the amount of the small claims court filing fee paid
8 by a party pursuant to subdivision-(b) (c) of Section 116.230 that
9 exceeds the amount that would have been paid if the party had
10 paid the fee pursuant to subdivision-(a) (b) of Section 116.230
11 shall not be recoverable as costs.

12 (h) When the court renders judgment, the clerk shall promptly
13 deliver or mail notice of entry of the judgment to the parties, and
14 shall execute a certificate of personal delivery or mailing and
15 place it in the file.

16 (i) The notice of entry of judgment shall be on a form
17 approved or adopted by the Judicial Council.

18 ~~SEC. 7. Section 116.910 of the Code of Civil Procedure is~~
19 ~~amended to read:~~

20 ~~116.910. (a) Except as provided in this chapter, including,~~
21 ~~but not limited to, Section 116.230, no fee or charge shall be~~
22 ~~collected by any officer for any service provided under this~~
23 ~~chapter.~~

24 ~~(b) All fees collected under this chapter shall be deposited~~
25 ~~with the treasurer of the city and county or county in whose~~
26 ~~jurisdiction the court is located.~~

27 ~~(c) Six dollars (\$6) of each fifteen dollar (\$15) fee and~~
28 ~~fourteen dollars (\$14) of each thirty dollar (\$30) fee charged and~~
29 ~~collected under subdivision (a) of Section 116.230 shall be~~
30 ~~deposited by each county in a special account. Of the money~~
31 ~~deposited in this account pursuant to this subdivision:~~

32 ~~(1) In counties with a population of less than 4,000,000, a~~
33 ~~minimum of 50 percent shall be used to fund the small claims~~
34 ~~adviser service described in Section 116.940. The remainder of~~
35 ~~these funds shall be used for court and court-related programs.~~
36 ~~Records of these moneys shall be available for inspection by the~~
37 ~~public on request.~~

38 ~~(2) In counties with a population of at least 4,000,000, not less~~
39 ~~than five hundred thousand dollars (\$500,000) shall be used to~~
40 ~~fund the small claims adviser service described in Section~~

1 ~~116.940. That amount shall be increased each fiscal year by an~~
2 ~~amount equal to the percentage increase in revenues derived from~~
3 ~~small claims court filing fees over the prior fiscal year. The~~
4 ~~remainder of these funds shall be used for court and court-related~~
5 ~~programs. Records of these moneys shall be available for~~
6 ~~inspection by the public on request.~~

7 ~~(d) This section and Section 116.940 shall not be applied in~~
8 ~~any manner that results in a reduction of the level of services, or~~
9 ~~the amount of funds allocated for providing the services~~
10 ~~described in Section 116.940, that are in existence in each county~~
11 ~~during the fiscal year 1989-90. Nothing in this section shall~~
12 ~~preclude the county from procuring other funding, including state~~
13 ~~court block grants, to comply with the requirements of Section~~
14 ~~116.940.~~

15 ~~(e) All funds for advisory services pursuant to Section 116.232~~
16 ~~are in addition to the funds described in, and shall not be subject~~
17 ~~to, subdivision (e).~~

18 ~~SEC. 8.~~

19 *SEC. 6.* Section 116.940 of the Code of Civil Procedure is
20 amended to read:

21 116.940. (a) Except as otherwise provided in this section or
22 in rules adopted by the Judicial Council, which are consistent
23 with the requirements of this section, the characteristics of the
24 small claims advisory service required by Section 116.260 shall
25 be determined by each county in accordance with local needs and
26 conditions.

27 (b) Each advisory service shall provide the following services:

28 (1) Individual personal advisory services, in person or by
29 telephone, and by any other means reasonably calculated to
30 provide timely and appropriate assistance. The topics covered by
31 individual personal advisory services shall include, but not be
32 limited to, preparation of small claims court filings, procedures,
33 including procedures related to the conduct of the hearing, and
34 information on the collection of small claims court judgments.

35 (2) Recorded telephone messages may be used to supplement
36 the individual personal advisory services, but shall not be the sole
37 means of providing advice available in the county.

38 (3) Adjacent counties may provide advisory services jointly.

39 (c) In any county in which the number of small claims actions
40 filed annually is 1,000 or less as averaged over the immediately

preceding two fiscal years, the county may elect to exempt itself from the requirements set forth in subdivision (b). This exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If a county so exempts itself, the county shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each superior court, the county administrator's office, other appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisers may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisers may not appear in court as an advocate for any party.

(f) Advisers, including independent contractors, other employees, and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided as a public service on behalf of a court or county to small claims litigants and potential litigants under this chapter.

~~SEC. 9. Sections 4 and 7 of this act, which add Section 116.232 to, and amend Section 116.910, of the Code of Civil Procedure, shall only become operative if Assembly Bill 1742 is not enacted. If Assembly Bill 1742 is enacted and becomes effective on or before January 1, 2006, Sections 4 and 7 of this act shall not become operative.~~